

## Message Text

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ORIGIN ARA-10

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COM/CPS,PJHAMAN

GC, LAGRANT

LA/DR,HHASSAN

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R 201413Z MAY 77

FM SECSTATE WASHDC

TO AMEMBASSY SANTIAGO

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E.O. 11652: N/A

TAGS:

SUBJECT: LOAN 020 SAN VICENTE PORT (MERIT EXPORT)

REFERENCE: (A) SANTIAGO 03841, (B) STATE 095482, (C)  
SANTIAGO 3341, (D) STATE 088771, (E) SANTIAGO 2916

1. AID/W IS CONSTRAINED TO MAINTAIN SURVEILLANCE OF MERIT  
EXPORT TRANSACTIONS THROUGH PRIOR REVIEW PROCEDURES SET  
FORTH UNDER SECTION 201.33 OF AID REGULATION 1. THIS  
SHOULD NOT IMPEDE MERIT EXPORT FROM CARRYING OUT LEGITIMATE  
CONTRACTUAL OBLIGATIONS. PRIOR REVIEW IS DESIGNED TO INSURE  
AGAINST IMPROPRIETIES BY REQUIRING THE SUPPLIER TO SUBMIT  
COPIES OF RELEVANT DOCUMENTATION (INCLUDING CORRESPONDENCE)  
FOR PRE-AUDIT BY AID/W IN ADVANCE OF MAKING A REQUEST FOR  
PAYMENT FROM U.S. BANK. THE PRIOR REVIEW REQUIREMENT IS  
IMPOSED ON THOSE SUPPLIERS WHO HAVE VIOLATED A.I.D. REGU-  
LATIONS IN THE PAST. IN THE CASE OF MERIT EXPORT, A.I.D.'S  
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GENERAL COUNSEL CONSIDERED SUSPENSION/DEBARMENT UNDER A.I.D.  
REGULATION 8 BUT AGREED TO PERMIT FINANCING OF THEIR TRANS-  
ACTIONS ONLY IF SUBJECT TO PRIOR REVIEW.

2. USAID IS ADVISED THAT THE LETTER OF CREDIT FOR THE  
TRANSACTION IN QUESTION REQUIRES THAT MERIT EXPORT SUBMIT  
TO PRIOR REVIEW AS A CONDITION FOR RECEIVING PAYMENT.

MOREOVER, MERIT EXPORT HAS BEEN AWARE OF THIS REQUIREMENT FROM THE BEGINNING AND ADVISED THEIR AGENT IN SANTIAGO (BALFOUR-LYON S.A.C.E.L.) BY LETTER DATED FEBRUARY 28, 1977 THAT THE TRANSACTION WOULD HAVE TO BE SUBMITTED TO AID/W FOR PRIOR APPROVAL. IN FACT, MERIT EXPORT EXPRESSED CONCERN IN THE LETTER TO THEIR AGENT THAT DETAILS OF THE TRANSACTION MIGHT POSE A PROBLEM WHEN SUBMITTED FOR PRIOR REVIEW.

3. AID/W DOES NOT HAVE ALL OF THE DOCUMENTATION AND CORRESPONDENCE ON THIS TRANSACTION. HOWEVER, WHAT WE HAVE SEEN IN THE CORRESPONDENCE ON HAND RAISES SUSPICION OF POSSIBLE "KICKBACK" ARRANGEMENTS WHICH WE WOULD WANT TO INVESTIGATE.

4. THE FOLLOWING IS A SUMMARY OF WHAT IS REVEALED IN THE CORRESPONDENCE IN THE POSSESSION OF AID/W'S OFFICE OF COMMODITY MANAGEMENT:

A. IN A LETTER DATED JANUARY 31, 1977, MERIT EXPORT QUERIED BALFOUR-LYON ABOUT A DIFFERENCE BETWEEN THE UNIT PRICE QUOTED BY MERIT EXPORT ON THE HYDRAULIC JACKS AND A HIGHER PRICE SHOWN ON THE ORDER GIVEN THEM BY BALFOUR-LYON. QUOTE: YOU SHOW A UNIT PRICE OF DOLLARS 199.40 ON THE HYDRAULIC JACKS. PER OUR QUOTATION OF SEPTEMBER 28, 1976 TO YOU, THE UNIT PRICE NET TO YOU IS DOLLARS 127.12. PLEASE EXPLAIN THIS DIFFERENCE. END OF QUOTATION. IN THE SAME LETTER, MERIT EXPORT TELLS BALFOUR-LYON QUOTE: LIMITED OFFICIAL USE

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IF THERE ARE AID FUNDS INVOLVED IN THIS TRANSACTION, WE WANT YOU TO KNOW THAT WE WILL NOT CERTIFY TO OR WILL NOT MAKE REFUNDS TO YOU UNLESS THEY ARE IN ACCORD WITH WHAT HAS BEEN QUOTED. WE DO NOT WANT ANY PROBLEMS WITH U.S. AID FUNDS -- IT SIMPLY IS NOT WORTH THE PENALTY OR RISK INVOLVED EITHER FOR YOU OR FOR US. END OF QUOTATION.

B. BALFOUR-LYON'S RESPONSE PER LETTER DATED FEBRUARY 18, 1977 INDICATES THAT THEY INTEND TO MAKE A DOLLAR PROFIT ON A RESALE TO THE LOCAL CUSTOMER BY MEANS OF HAVING THEIR "DISCOUNT" PAID TO THEM AS A DOLLAR COMMISSION.

C. AGAIN MERIT EXPORT WROTE TO BALFOUR-LYON (IN A LETTER DATED FEBRUARY 28, 1977) INSISTING QUOTE: WHAT WITH THE INSTRUCTIONS ABOUT COMMISSIONS, ETC. THAT YOU SET FORTH IN YOUR PREVIOUS CORRESPONDENCE, I DO NOT THINK THAT YOU WOULD WANT TO SUBMIT THAT KIND OF INFORMATION TO AID, WASHINGTON, D.C. FOR OUR PART, WE WOULD, IF WE WERE TO PROCEED, ONLY DRAW FOR THE ACTUAL VALUE DUE US AND WOULD

PREFER NOT TO BECOME INVOLVED IN COMMISSION REFUNDS. END OF QUOTATION.

D. BALFOUR-LYON'S RESPONSE IN A LETTER DATED MARCH 10, 1977 SUGGESTS THAT THE WAY IN WHICH MERIT EXPORT COULD COVER UP THE OVERPRICING ARRANGEMENT WOULD BE TO CLAIM INCREASED COST, INVOICE AT THE HIGHER PRICE, DECLARE THEIR "COMMISSION" TO AID IF REQUIRED, AND PAY THE SO-CALLED COMMISSION TO THEM AFTER MERIT EXPORT RECEIVES PAYMENT FOR THE TRANSACTION.

E. FINALLY, IN A LETTER DATED APRIL 27, 1977 BALFOUR-LYON OFFERS TO SPLIT THEIR "COMMISSION" WITH MERIT EXPORT IN A DEAL WHICH WOULD ALLOW MERIT TO RETAIN 25 PERCENT OF THE AMOUNT WHICH BALFOUR-LYON HAD DESIGNATED AS THEIR "PROFIT".

5. BASED ON THE DOCUMENTATION AND CORRESPONDENCE SUBMITTED  
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BY MERIT EXPORT, AID/W WOULD NOT APPROVE PAYMENT OF THE SUBJECT TRANSACTION. THE MARKUP ON MERIT EXPORT'S ORIGINAL QUOTATION IS NOT ELIGIBLE FOR AID FINANCING SINCE IT REPRESENTS A "PROFIT" ON RESALE WHICH SHOULD BE REALIZED IN LOCAL CURRENCY RATHER THAN FOREIGN EXCHANGE.

6. UNDER THE CIRCUMSTANCES, AID/W WILL NOT WAIVE THE PRIOR REVIEW REQUIREMENT FOR THE MERIT EXPORT TRANSACTION UNDER THE SUBJECT LOAN. DECONTROL 12/31/77 CHRISTOPHER

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## Message Attributes

**Automatic Decaptoning:** X  
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**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** DOCUMENTS, LOANS, BUSINESS FIRMS, TRANSACTION CHECKS  
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**Original Previous Handling Restrictions:** n/a  
**Page Count:** 3  
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**Review Markings:**  
Margaret P. Grafeld  
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22 May 2009  
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